

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MARCOS SANCHEZ,

Movant,

vs.

**No. CV 15-01188 JB/SMV
No. CR 04-01685 JB**

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS MATTER is before the Court on the *pro se* Movant Marcos Sanchez's letter mailed June 27, 2016 and received by the Court on July 1, 2016. (CV Doc. 1; CR Doc. 104). The Court has also reviewed the docket in Sanchez's criminal case no. CR 13-02163 RB.

Sanchez recites that he believes he is entitled to relief under the Supreme Court's ruling in *Johnson v. United States* (CV Doc. 1, CR Doc. 104). However, Sanchez may only challenge his sentence under *Johnson* by a motion under 28 U.S.C. § 2255. *See* 28 U.S.C. § 2255(a) and (e); *Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir. 1996) ("The exclusive remedy for testing the validity of a judgment and sentence, unless it is inadequate or ineffective, is that provided for in 28 U.S.C. § 2255"). Therefore, the Court intends to recharacterize Sanchez's letter as a first 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence. Pursuant to *Castro v. United States*, 540 U.S. 375 (2003):

When a court recharacterizes a *pro se* litigant's motion as a first § 2255 motion . . . the district court must notify the *pro se* litigant that it intends to recharacterize the pleading, warn the litigant that this recharacterization means that any subsequent § 2255 motion

will be subject to the restriction on “second or successive” motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has.

Id. at 383. Consistent with *Castro*, the Court notifies Sanchez that it intends to recharacterize his letter as a § 2255 motion and afford him an opportunity to withdraw the motion or to amend it to add additional claims he may have. *See* Rule 2 of the Rules Governing Section 2255 Proceedings for the United States District Courts (providing that a motion to vacate, set aside, or correct sentence must: “(1) specify all grounds for relief available to the moving party; (2) state the facts supporting each ground; (3) state the relief requested; (4) be printed, typewritten, or legibly handwritten; and (5) be signed under penalty of perjury by the movant or by a person authorized to sign it for the movant.”). If Sanchez fails to timely amend or withdraw his letter, then Sanchez’s letter will be recharacterized and any subsequent § 2255 motions will be subject to the restriction on “second or successive” motions in 28 U.S.C. §§ 2244 and 2255(h).

IT IS ORDERED that Movant Marcos Sanchez is **GRANTED** leave to amend or withdraw his letter (CV Doc. 1, CR Doc. 104), which the Court intends to recharacterize as a motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255, within twenty-one (21) days of the entry of this Order.

IT IS FURTHER ORDERED that the Clerk of the Court **MAIL** a copy of this Order, together with a form § 2255 motion and instructions, to Sanchez.



STEPHAN M. VIDMAR
UNITED STATES MAGISTRATE JUDGE